

APPEAL NO. 041664
FILED AUGUST 31, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 25, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, from February 19 through May 19, 2004. The claimant appealed the SIBs determination. The respondent (carrier) responded, asserting that the claimant's request for review fails to clearly and concisely rebut each issue on which review is sought and does not meet the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(2) (Rule 143.3(a)(2)).

DECISION

Affirmed.

With regard to the claimant's appeal, the Appeals Panel has held that no particular form of appeal is required, and an appeal, even though terse or inartfully worded, will be considered. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992; Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993. Generally, an appeal that lacks specificity will be treated as a challenge to the sufficiency of the evidence. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. We consider the claimant's appeal to be a minimally sufficient challenge to the sufficiency of the evidence supporting the hearing officer's decision.

Section 408.142(a) and Rule 130.102 set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rules 130.102(d)(4) and 130.102(d)(5). Rule 130.102(d)(4)), relied upon by the claimant for SIBs entitlement based on a total inability to work theory, states that the "good faith" criterion will be met if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

Alternatively, Rule 130.102(d)(5), which was also relied upon by the claimant for SIBs entitlement, provides that the good faith requirement may be satisfied if the claimant "has provided sufficient documentation as described in subsection (e)." Rule 130.102(e) states that "an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search

efforts.” The rule then lists information to be considered in determining whether the injured employee has made a good faith effort, including, among other things, the number of jobs applied for, applications which document the job search, the amount of time spent in attempting to find employment, and any job search plan.

Whether the claimant satisfied the good faith requirements of either Rule 130.102(d)(4) or Rule 130.102(d)(5) was a factual question for the hearing officer to resolve. The hearing officer noted that the claimant had some ability to work during the qualifying period in question; that the narrative report did not specifically explain how the claimant’s injury caused a total inability to work; and that she failed to document a job search during each week of the qualifying period in dispute. Also, the hearing officer noted that the claimant did not make a good faith attempt to obtain employment, rather she made an attempt to qualify for SIBs. The hearing officer concluded that the claimant was not entitled to SIBs for the first quarter. Nothing in our review of the record indicates that the hearing officer’s decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Additionally, the claimant essentially complains that she was not provided assistance from an ombudsman to appeal the hearing officer’s SIBs determination. Section 410.202 and Rule 143.3 provides that a “filing” of an appeal be by “a party.” An ombudsman cannot stand in the shoes of the claimant and is not the equivalent of “the party.” An ombudsman may appropriately assist a claimant but is not a representative for a claimant. Texas Workers’ Compensation Commission Appeal No. 92025, decided March 16, 1992; Texas Workers’ Compensation Commission Appeal No. 94358, decided May 11, 1994. The claimant remains the steward of his/her case. Unlike an attorney or other representative, an ombudsman does not have the authority to act or bind a claimant as his agent. See *generally* Section 409.041, Ombudsman Program.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge